

WRITTEN TESTIMONY OF

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U.S. DEPARTMENT OF COMMERCE

BEFORE THE

HOUSE SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
HOUSE RESOURCES COMMITTEE

May 16, 2002

I. INTRODUCTION

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to appear before you to testify on this draft legislation reauthorizing many of the ocean and coastal programs of the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). NOAA appreciates your continued support and interest in ensuring that it has the appropriate authorities and organization to address its ocean and coastal missions and responsibilities. In recent years, these programs have been the subject of many hearings before this Subcommittee. We note that the draft bills would authorize the National Oceanic and Atmospheric Administration, and four of its line offices, the Office of Oceanic and Atmospheric Research (OAR), the National Marine Fisheries Services (NMFS), the Office Marine and Aircraft Operations (OMAO), and the National Ocean Service (NOS), as well as the Hydrographic Services Improvement Act. These draft bills are being reviewed by the Department and the Department would appreciate the opportunity to provide written views on them prior to the markup.

One apparent goal of the legislation is to clarify the roles and responsibilities of four NOAA line offices that have ocean and coastal responsibilities—the National Ocean Service, the Office of Marine and Aircraft Operations, the Office of Oceanic and Atmospheric Research, and the National Marine Fisheries Service. The thrust of the legislation is to better integrate existing activities and capabilities versus creating new programs, and to improve the scientific basis for

decision-making. The Department and NOAA will continue working with the Subcommittee to ensure that the different bills appropriately address authorizations for each NOAA line office.

The Administration is implementing the Oceans Act of 2000. The President appointed the Commission on Ocean Policy last summer. Currently, the Commission is in the midst of a series of nine regional fact-finding meetings. In fact, Vice Admiral Lautenbacher is presently testifying at an Oceans Commission Field Hearing. Commission Chairman, Admiral James D. Watkins, USN (Ret), has indicated his intent to complete the Commission's work and produce a final report on schedule a year from now.

The Administration shares your interest in the relationship among these programs. Upon coming to NOAA, our Administrator, Vice Admiral Conrad C. Lautenbacher, Jr. USN (Ret.), called for a bottom-up, fundamental "NOAA Program Review" to examine the Agency's strengths and opportunities for improvement. In February, the Vice Admiral gave all NOAA employees an opportunity to suggest organizational, resource and business process changes. Since that time, I have been serving as chair of the NOAA Program Review Team, a group of sixteen NOAA Executives representing each line and staff office, supported by a staff of executive leadership candidates, and a contract facilitator. This team has discussed and debated a number of programmatic and organizational issues, employee suggestions and has put forward their own ideas for building a better NOAA to serve the American people.

As you know, most of the new leadership for NOAA has now come on board. At this time, we are drafting the Program Review Team (PRT) report and will soon present this to the Administrator, Deputy Administrator and senior NOAA and Department of Commerce leadership for their consideration. While I cannot discuss the report prior to its review, approval and release, I should note that we have considered some of the issues raised by this Subcommittee and this legislation. NOAA leadership will, of course, return to discuss with you and the Committee staff relevant issues after the Administration has considered the PRT report. I hope that we can work with you on any reforms and legislative changes that may be required.

I will provide some comments on the draft legislation here today. But, in part because of the review we are finalizing, I would also like to reserve the right to provide subsequent suggestions. I will keep the Subcommittee updated on the Administration's efforts and look forward to working with you as a bill is finalized. NOAA will continue working with the Subcommittee to ensure that authorizations for each NOAA office are appropriately addressed and are consistent

with the President's Budget.

II. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION

Generally, NOAA supports the provisions in Title I, Section 101, outlining the activities NOAA is authorized to undertake in pursuit of its missions. As you know, NOAA's mission is twofold: to describe and predict changes in the earth's environment, and to conserve and manage wisely the Nation's coastal and marine resources and to provide sustainable economic opportunities. NOAA will also work with the Subcommittee to be sure we have the necessary funding authorities for grants, contracts, and other agreements. As these authorities are the tools we need to do our job, it is important that this section provides the necessary flexibility and efficiency.

III. THE NATIONAL COASTAL AND OCEAN SERVICE AUTHORIZATION ACT

The National Coastal and Ocean Service Authorization Act renames NOAA's National Ocean Service (NOS) the National *Coastal* and Ocean Service—a change which better reflects the scope of NOS programs. NOS' mission is to be our principal line office for coastal stewardship through partnerships at all levels. NOS works to support and provide the science, information, management, and leadership necessary to balance the environmental and economic well-being of the Nation's coastal resources and communities. Programs like our NOS Coastal Services Center integrate NOAA programs and focus on program delivery for our customers - America's coastal managers and communities.

Section 3. National Coastal and Ocean Service

As Section 3(b) indicates, NOS relies on a variety of underlying statutory authorities. Among these authorities are the Coastal Zone Management Act and the National Marine Sanctuaries Act, both of which support NOS' mission of managing and conserving the coastal and ocean resources upon which our Nation depends. Explicit in these management programs is the need for interagency cooperation and partnerships. NOS uses, promotes and relies upon partnerships with other agencies, States, local authorities, nongovernmental organizations, federally recognized Indian tribes, academia and the private sector. Section 3(d) of the draft bill is intended to promote this partnership-based approach by providing the authority to use a variety of

agreements, grants and other cooperative tools; however, we believe the section, as drafted, may require technical revision, and the Department will work with the Subcommittee on this language. NOAA suggests that the bill provide explicit authority for the Coastal America Partnership Program in this section of the bill. NOAA will continue to work with the Subcommittee to ensure that the grants and agreements language provides both the flexibility and the efficiency to carry out its work.

Section 4. Coastal Monitoring, Assessment, Observation, and Forecasting

Throughout the Federal government, as well as at the State and local level and academia, people are engaged in a wide variety of coastal monitoring and related activities. Much of the monitoring is regional and often is conducted or supported by a variety of Federal agencies ranging from NOAA, the U.S. Geological Survey and the Coast Guard to the National Science Foundation and the U.S. Navy. Data is gathered to meet the program requirements or the needs of a specific group of users.

Currently there are efforts underway to coordinate these various systems into an Integrated and Sustained Coastal Ocean Observing System. This effort is part of the larger effort to develop the U.S. contribution to the Global Ocean Observing System (GOOS), which is international in scope. NOAA is a full participant in these efforts, which are being led by the National Ocean Research Leadership Council (NORLC) of which NOAA is a member. In March, a meeting was held in Virginia to further develop an implementation plan for the U.S. contributions to GOOS. The meeting was held in order to help coordinate a response to a Congressional request for various agencies to develop a plan for an ocean observing system. A paper is being prepared and should be presented to the NORLC for approval at the semiannual meeting on May 23. The Council intends to forward it to the White House Office of Science and Technology Policy (OSTP) for its final review before delivery to Congress.

While supportive of the objectives of Section 4, I would like to defer comments on the specific organization of the coastal observing system until the OSTP/NORLC report is delivered to Congress.

Section 5: Coastal and Navigation Services

This section on technical assistance provides the authority to train, educate and assist others through the transfer of technology and expertise in areas relating to ocean and coastal resource management.

Section 6: State of the Coast Report

A periodic assessment would help identify new challenges and help monitor and assess the success of ongoing research and management efforts. NOAA will work with the Committee to determine the most effective means for achieving this objective.

IV. HYDROGRAPHIC SERVICE IMPROVEMENT AMENDMENTS

Overview

The Administration supports reauthorization of the Hydrographic Services Improvement Act (HSIA) of 1998. NOAA's hydrographic services provide data that promote safe, efficient maritime commerce and port security. We do have several comments on some elements of the draft bill under consideration by the Subcommittee, relating to the implementation of a product quality assurance program, discussing the program mission, creating a permanent advisory panel, repealing of the Act of 1947 and authorizing appropriations.

Section 3: Quality Assurance Program

The Hydrographic Services Improvement Act of 1998, Section 303 (a)(3) directs NOAA to promulgate standards for hydrographic services provided by the Administration. Under Section 304, the Administrator then may, at his or her discretion, certify hydrographic products produced by non-Federal entities that meet those standards. Some examples of standards NOAA has promulgated or is promulgating include: International Hydrographic Organization (IHO) S-44 Standards for Hydrographic Surveys, the NOAA Hydrographic Manual and survey specifications in contracts for hydrographic surveys; Tide and Current Table production standards; the Nautical

Charting Manual and IHO chart specifications; and recommended Standards for Electronic Chart Systems.

The Quality Assurance section of the HSIA (Sec. 304) states that NOAA may develop and implement a quality assurance program to certify “hydrographic products,” which the HSIA defines as “any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.” The draft bill changes the term “may” to “shall.” The draft bill would require the Secretary to implement such a program within 2 years. For the following reasons, NOAA opposes this change.

The language raises questions of liability. The proposed amendment would require NOAA certify any and all products on a basis that is equally available to all interested parties. Certification would imply that NOAA authorizes products for a specific use, i.e., for navigation. Therefore, if enacted and implemented, the Federal government would likely be named as a party to litigation stemming from marine accidents in which one or more of the parties used a privately produced product that had been certified by NOAA. The HSIA attempts to limit exposure to liability at Section 304(c), which says the Federal government shall “not be liable for any negligence by a person that produces” certified products. But, parties could bring other causes of action against NOAA by claiming that NOAA itself was negligent by failing to discover the negligence of the party producing the hydrographic product prior to issuing a certification. NOAA’s certification obligations are also unclear under the new language. NOAA may be under an obligation to identify all producers of hydrographic products and review them for accuracy prior to certifying them. This creates a potential litigation threat and could raise legal costs for the Department of Commerce.

It may impinge on responsibilities of the U.S. Coast Guard. As noted, certification by NOAA would imply Federal approval of the product for use in navigation. This could lead to confusion because the Coast Guard, not NOAA, has responsibility for certifying aids to navigation (including NOAA charts) as meeting legal carriage requirements as established under international law and agreements. NOAA would coordinate the certification requirement very closely with the U.S. Coast Guard. NOAA recommends a thorough Coast Guard review of the quality assurance provisions before enactment.

The HSIA at Section 304(b)(2) says NOAA can charge a fee for certification and that the fee can be set to cover the complete cost of the certification process, including administration. The proposed amendment states that implementation is “subject to the availability of appropriations.” It is unclear whether the program should be self sufficient or not. If mandated to implement the quality assurance program, the program should not be subsidized by taxpayers.

Section 4(a). – Mission

In the mission statement, NOAA recommends including language to enable NOAA to support port security efforts. NOAA disagrees with the Subcommittee’s proposed amendment which would permit the Administrator to use funds directly in support of two other NOAA missions, coastal and fishery management. As drafted, this could potentially divert resources from navigation requirements, such as reducing the survey backlog. Instead, NOAA recommends language that would direct the Agency to aggressively seek such ancillary uses of hydrographic data.

Section 5 – Creating a Permanent Advisory Panel

The creation of permanent advisory panels can provide some benefits for pressing public matters that require ongoing, frequent interaction among all interests. In this case, alternatives, such as studies by the National Research Council/National Academies of Science and routine outreach activities could be used to achieve similar results. Also, NOAA currently is an active participant in the interagency effort on the Marine Transportation System (MTS), which already has an advisory group. The MTS National Advisory Committee could create a working group to address issues related to hydrographic services. This may be better option because a working group could look beyond NOAA and examine all Federal agencies with navigation information responsibilities, including the Navy, the National Imagery and Mapping Agency (NIMA), the Army Corps of Engineers, and the Coast Guard.

Section 4(b)(2) – Repeal of the Act of 1947

The draft bill repeals the 55 year old organic authority for NOAA’s navigation and positioning programs, including surveying, mapping, charting, tides, currents and related activities. The goal of merging the 1947 Act and the HSIA has merit but, as proposed, the 1947 Act’s permanent authorization for these programs is not sustained. The Administration understands that limiting

authorizations of appropriations to a set number of years provides an impetus for Congress to maintain its oversight responsibilities. Programs relating directly to public safety, however, should not be subjected to the potential uncertainty that is created when such authorizations lapse. The Administration recommends that the following language be inserted at the end of Section 7:

“(5) If this Act is not reauthorized before fiscal year 2009, such sums as necessary may be appropriated for the activities authorized under this Act for each subsequent fiscal year beginning in FY 2009.”

Section 7: Authorization of Appropriations

The proposed section authorizing appropriations should be consistent with the President’s FY2003 budget request.

V. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICERS ACT OF 2002

The availability of commissioned officers within this agency, in numbers sufficient to satisfy our operational requirements, is a matter of growing importance as we face new challenges. The Corps has proven its usefulness and I believe it has a continuing role to play as NOAA strives to reach its fullest potential in service to the Nation. The administration supports better alignment of the substance of current NOAA Corps personnel authorities and practices with similar authorities and practices, as now reflected in the revised and modernized Title 10 of the United States Code. Much of the existing language for the NOAA Corps has as its source the Coast and Geodetic Survey Commissioned Officers Act of 1948, which served to provide parity with the other commissioned services. Little substantive modernization has occurred in the existing language over the years. Consolidation into one comprehensive act of existing statutory language related to the NOAA Corps, language that is now scattered in the United States Code, would be helpful. We are reviewing the draft bill, including the statutory roles assigned to the President, and will provide written views as soon as the review is complete.

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VI. THE NATIONAL OCEANIC AND ATMOSPHERIC RESEARCH SERVICE ACT

I would like to next address the portion of the bill entitled, “National Oceanic and Atmospheric Research Service Act,” which authorizes changes in what is now NOAA’s Office of Oceanic and Atmospheric Research (OAR) or “NOAA Research” as it is often called. As an important and integral component of NOAA , NOAA Research explores the earth and atmosphere from the surface of the sun to the depths of the ocean. The NOAA Research role within the agency’s larger mission is to provide research for products and services that describe and predict changes in the environment. Our results allow decision makers to make effective judgments in order to prevent the loss of human life and conserve and manage natural resources. The office conducts research in three major areas: atmosphere, climate, and ocean and coastal resources.

Section 4. Assistant Administrator for Oceanic and Atmospheric Research and Chief Scientist

This draft bill establishes the current NOAA OAR as the “National Oceanic and Atmospheric Research Service” within NOAA. The bill provides that the Assistant Administrator of the Service will serve an additional role as the Chief Scientist of NOAA. The section authorizes the outreach and education functions of the Service and provides a legislative mandate for the Office of Weather and Air Quality, an Office of Climate Research, and an Office of Oceanographic Research, Exploration, and Extension. It authorizes the National Undersea Research Program as well as authorizes the Assistant Administrator to oversee the National Sea Grant College Program. In respect to Sea Grant, the Administration recommends that the legislation be amended to be consistent with the President’s Budget. The legislation formalizes the existing partnerships between NOAA Research and our university partners in 11 Joint Institutes. In addition, the legislation mandates that the Assistant Administrator/Chief Scientist will be selected for the position by virtue of education and scientific credentials and shall be the principal science advisor to the NOAA Administrator.

Current legislative mandates for NOAA Research programs include the National Weather Service Organic Act of 1890 (15 U.S.C. § 313), which provides a non-expiring authority for NOAA to monitor and record climatic conditions, and the 1990 Global Change Research Act (15 U.S.C. § 2921), which establishes the U.S. Global Change Research Program (USGCRP) aimed at understanding climate variability and predictability. The Non-indigenous Aquatic Nuisance

Prevention and Control Act of 1990 provides authority through 2002 for NOAA to fund research, prevention and control activities that relate to aquatic nuisance species. The National Sea Grant College Program Re-authorization Act of 1998 authorizes the National Sea Grant College Program, the Knauss Fellows program, and research on invasive species, oyster disease, and harmful algal blooms through 2003. The Sea Grant program was originally authorized in 1966.

Science and research at NOAA is one of the areas that has been discussed by the NOAA Program Review Team (PRT). The issue of NOAA research and science in support of our oceanic and atmospheric missions as well as the role of the Chief Scientist and the NOAA Science Advisory Board will be one of the areas that the PRT report will cover. As I noted earlier in my testimony, these are issues that will be discussed with the Administrator, Deputy Administrator and the senior leadership team in NOAA and the Department of Commerce.

Section 5. Office of Climate Research

As you are aware, NOAA is well established as a leading science agency in climate research. Our research in this area has led to key accomplishments such as helping to identify the cause of the ozone hole in the Antarctic and providing a six-month warning on El Nino in 1997. The agency hears from stakeholders that the need is greater than ever for delivery of reliable climate information for enhanced planning and decision making. Providing reliable climate information is becoming increasingly important to the health, safety and vitality of the American people and to the national and global economies. The Federal government should play a strong role in providing climate information that is crucial in helping our stakeholders manage their lives and businesses.

To respond to the need for a coordinated Federal research effort and reliable climate information, the Administration has proposed restructuring climate programs within the Federal government to better enable them to answer scientific questions that ultimately influence policy. Therefore, the White House has proposed that the government's climate change research be coordinated through two new offices, a Climate Change Science Program Office and a Climate Change Technology Program Office. The Assistant Secretary of Commerce for Oceans and Atmosphere will be designated to head the Climate Change Science Office. The Administration is seeking to address the concerns that the current U.S. Global Change Research Program overseen by seven Federal agencies may not be wide enough in scope to meet the constantly changing needs of climate research and may not provide sufficient accountability. Under the Administration

proposal, a cabinet-level Committee on Climate Change Science and Technology Integration will make recommendations to the President on climate change issues. It is anticipated that NOAA will play a significant role in supporting this effort. We look forward to working with the Congress toward achieving our common goals in delivery of the world's best climate research.

Section 6. Office of Weather and Air Quality Research

We are very appreciative of the support from Congress on the recent passage of the amendment to the energy legislation as passed in H.R. 4 which provides NOAA with authority to issue air quality forecasts and regional warnings as a mission of the agency. Providing a mandate for NOAA's air quality research will be beneficial to the American public. The 1990 Clean Air Amendments define NOAA's role in providing the atmospheric chemistry and transport research that supports the efforts of the interagency National Acid Rain Precipitation Program. We look forward to working with the Committee to develop language that properly clarifies NOAA's role in air quality forecasting research.

Section 7 - 10. Oceanographic Research, Exploration, and Extension, Ocean Exploration Program, and the National Undersea Research Program

The current version of the National Oceanic and Atmospheric Research Act establishes an Office of Oceanographic Research, Education and Extension and an Office of Ocean Exploration and the National Undersea Research Program (NURP). NOAA Research and NOAA Ocean Service manage an Office of Ocean Exploration (OE) that has a mission of searching and investigating the oceans for the purpose of discovery and the advancement of knowledge of the ocean's physical, chemical and biological environments, processes, characteristics, and resources. OE accomplishes this through interdisciplinary expeditions to unknown, or poorly known regions and through innovative experiments. The program advocates discovery-based science and collaboration between multiple partners and disciplines.

As proposed, the authorization bill mandates an outreach and education function within NOAA Research. Education is an important component of NOAA's mission and of ensuring that future generations are prepared for the science needs of tomorrow. An education focus has been provided for some specific NOAA programs, but it would be preferable to have the agency-wide authority to develop an integrated and coordinated education strategy and program. To deliver information about our research effectively, a strong communications function is critical to

success. If we are to promote scientific literacy and foster the next generation of world-class scientists to lead us into the 21st century, we need to strengthen our outreach and education capabilities and fully integrate communications into the management structure of the agency. We look forward to working with the Committee meet these objectives.

An important feature of the authorization is that it supports the longstanding relationships NOAA has with university partners through the Joint Institutes. We believe that these partnerships are critical to achieving NOAA's research goals and that the relationships have been key to our successful track record in environmental research. We look forward to further solidifying those partnerships through a legislative mandate.

VII. NATIONAL MARINE FISHERIES SERVICES ESTABLISHMENT ACT

NOAA appreciates the Subcommittee's efforts to formally authorize the National Marine Fisheries Service through this draft bill. It is important to note that this authorization would supplement NOAA's existing authority to manage the Nation's additional living marine resources, such as marine mammals and endangered or threatened species, among others. NOAA serves a significant role in protecting and managing these resources through its authority under the Marine Mammal Protection Act and the Endangered Species Act. These resources also include managing the effects to marine or anadromous species due to hydropower projects, and preservation of essential fish habitats. NOAA would also suggest that section 3(b)(1) be changed to reflect NOAA's present work which includes resources in state and international waters, such as marine mammals. For these resources, NOAA partners with states and other countries to ensure that the resources are managed in a comprehensive manner. NOAA would like to work with the Subcommittee to ensure these important authorities that will enable NOAA to comprehensively manage the Nation's living marine resources.

VIII. CONCLUSION

NOAA appreciates this opportunity to provide initial comments on this draft legislation. NOAA commends the Subcommittee for recognizing the need to facilitate the integration of ongoing research and management programs and to focus national monitoring and observation efforts on meeting diverse national needs and requirements. We look forward to working with the Subcommittee as this legislation is introduced and makes its way through the legislative process.

